IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6764 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RANCHHODBHAI GORDHANBHAI PATANVADIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6764 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS ARCHANA RAVAL, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/08/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu, has challenged his detention order dated 4.3.2004, by which he is detained as a "bootlegger", under the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner has also been served with the grounds of detention.

2. In the grounds of detention, there is a reference about three criminal cases registered against the petitioner under the Bombay Prohibition Act. It is alleged against the petitioner that, the petitioner is dealing in country liquor and violating the provisions of the Bombay Prohibition Act. After considering the aforesaid cases, and after considering the statements of secret witnesses, whose names have not been disclosed to the petitioner, the authority has detained the petitioner as a "bootlegger" under PASA.

3. The learned Advocate for the petitioner submitted that, three criminal cases were registered against the petitioner under the Prohibition Act, for dealing in country liquor, but it cannot be presumed that the petitioner has violated public order, as, at the most, it can be said that there is a breach of law and order on the part of the petitioner.

4. Learned advocate for the petitioner submitted that, the names of the witnesses are not disclosed by claiming privilege under Section 9(2) of the PASA. It is submitted that, before claiming the privilege under sec.9(2) of the PASA, the authority has not tried to verify the credentials and character of the detenu. It is further submitted that the privilege is claimed in a routine manner and, therefore, without any basis, the authority has tried to withhold the names of witnesses and as a result of that, the petitioner is denied the valuable right of making effective representation. To substantiate his say, learned advocate for the petitioner has relied upon the decision of this Court rendered in the case of KISHOR NAGINBHAI PARMAR v. STATE OF GUJARAT, reported in 2000 (4) GLR 3236, wherein it is held in para 11 as under :

> "11. In this view of the matter, the detaining authority while exercising powers under Section 9 (2) of the P.A.S.A.Act for claiming privilege is expected to consider the general background, character, antecedents, criminal tendency of propensity etc. of the detenu. In the instant case, if affidavit or the grounds of detention are considered, all that is recorded by the detaining authority is that the fear expressed by the witnesses is found to be genuine and correct by the detaining authority. The detaining authority has recorded that it has carefully scrutinized, examined and considered all the

> materials that were produced before him by the sponsoring authority. It is, therefore, clear that the detaining authority, while verifying the statements of the witnesses and while considering the question of exercising privilege under Sec. 9 (2) of the P.A.S.A. Act, has not taken any independent steps for considering general background, character, antecedents, criminal tendency etc. while recording subjective satisfaction, but has relied solely on the material produced by the sponsoring authority. There is no contemporaneous record to indicate the steps taken by the detaining authority and the grounds and reasons for arriving at the subjective satisfaction. It is therefore very difficult to conclude that the detaining authority has considered general background, character, antecedents, criminal tendency and propensity etc. of the detenu while arriving at the subjective satisfaction, for the need of exercise of powers under Sec. 9 (2) of the P.A.S.A. Act and claim privilege by not disclosing identity of the anonymous witnesses."

5. The learned advocate for the petitioner has further submitted that, thus, there is total non application of mind on the part of the detaining authority while claiming privilege under Section 9(2) of PASA, and therefore, on that ground also, the impugned order is required to be quashed and set aside.

6. Learned advocate for the petitioner further submitted that there is a delay in passing the detention order as the last case registered against the petitioner is of dated 11.1.2004, and as against that, the detention order was passed on 4.3.2004 and, therefore, there is a delay of more than one and a half months' period in passing the detention order from the last registered offence. The point of delay is already taken in para 10 of the petition. It is submitted that, in view of this long delay in passing the detention order from the last registered offence, the petitioner is required to be released on this ground also.

7. In this connection, learned advocate for the petitioner has relied on the decision of this Court in the case of Elesh Nandubhai Patel v. Commissioner of Police reported in 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21:-

"para.21 In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppl. SCC 61."

8. So far as the aforesaid point is concerned, no affidavit-in-reply is filed by the authority controverting the said contention nor is any file produced before the Court. In such type of cases, normally, reply is required to be filed, controverting the averments made in the petition; otherwise, it would be presumed that the averments made in the petition are correct because they stand uncontroverted. In view of the said aspect also, the averments made in this behalf are required to be accepted. Since the averments are not controverted and also on the ground of unexplained delay in passing the detention order, this petition is required to be allowed.

9. In view of what is stated above, this petition is allowed. The order of detention dated 4.3.2004 is quashed and set aside. The detenu, Ranchhodbhai Gordhanbhai Patanvadiya, is ordered to be set at liberty forthwith, if he is not required in connection with any other case.

10. At this stage, learned advocate for the petitioner has voluntarily made a statement that the petitioner will not enter into Dabhoi Taluka upto 30th November, 2004, unless he is required to appear in any

other case for attending the court. Learned advocate for the petitioner has further submitted that she is making the statement after taking instructions from the detenu. The Concerned Police Officer may also monitor this aspect so that the statement of the petitioner can be effectively taken care of by the authorities. Rule is made absolute.

(P.B. Majmudar, J.)

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